On the Paradox of State Religion and Religious Freedom

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Summary and Keywords

This essay explores the well-known tension between the commitment to a state religion and expressions of tolerance for other religions. The background question concerns the consequences of state religion, the more suspect of the two commitments, at least with respect to intergroup relations. A useful conception of state religion is as a central part of an *identity regime*, which can take several forms in national constitutions. It seems likely that state religion—and other exclusive elements of identity regimes—threaten the national attachment of ethnic minorities in ways that unwind many of the benefits of tolerance provisions. A simple typology helps to understand the variation in these provisions across jurisdictions and over time, and original historical cross-national data on national constitutions describes this variation in some detail. The evidence suggests that the world's constitutions are moving in strikingly divergent directions with respect to their provisions on religion.

Keywords: State religion, religious freedom, identity regime, constitution, official religion, secularism, intergroup conflict, politics and religion

The Paradox

The Iraqi Constitution of 2005 is noteworthy for what it tells us about the remarkable setting in which it emerged. Recall that the authors of that document hashed out a plan for a new Iraq under conditions of simmering ethnic conflict and under the supervision of occupying powers. The episode reminds us of a constitution's unique ability to reflect the ideas swirling around important political and historical events. Indeed, such reflections may be what endear the genre to those of us who are its aficionados. Among the difficult questions that faced the Iraqi drafters was how exactly to reconcile their citizens' religious commitments with the norms of liberal democracy. The outcome of such logical challenges can sometimes seem schizophrenic, or at least philosophically intriguing. So goes the Iraqi Constitution, which begins, unapologetically, with a set of arresting paradoxes[1]:

Article 2.

1. Islam is the official religion of the State and is a foundation source of legislation.
A. No law may be enacted that contradicts the established provisions of Islam.
B. No law may be enacted that contradicts the principles of democracy.
C. No law may be enacted that contradicts the rights and basic freedoms stipulated in this Constitution.

2. This Constitution guarantees the Islamic identity of the majority of the Iraqi people and guarantees the full religious rights to freedom of religious belief and practice of all individuals such as Christians, Yazidis, and Mandean Sabeans.

Article 3
Iraq is a country of multiple nationalities, religions, and sects. It is a founding and active member in the Arab League and is committed to its charter, and it is part of the Islamic world.

What one hand giveth, the other hand taketh away. Or so it seems. Left aside, for now, is the tension in Article 2.1 between the commitments to the people's representatives and those to clerical authorities. That kind of democratic tension is covered well and often enough elsewhere.[2]

The focus here is on Article 2's apparent tension between tolerance and identity formation. The freedom of religion expressed in Article 2.2 is an unambiguous expression of tolerance (if not inclusion); the clause even identifies specific groups to which the rights could potentially apply. But what to make of the official religion clause of Article 2.1, a common stipulation—it would seem—in national constitutions?

The establishment of an official religion, if it does anything, stakes out the boundaries of national identity. Like an official language or a restrictive citizenship law, it is part of a jurisdiction's *identity regime*. Identity regimes, as conceptualized here, consist of rules and regulations that make explicit *who* is included and *who is not* included as prototypical nationals. Such regimes serve the purpose of staking out an identity. They answer, very clearly, ever-present questions about "Who are we?," to echo the title of Samuel Huntington's (2004) provocative book.

Of course, identity staking has its merits: a strong sense of a people and their past can be empowering and inspirational. Such empowerment can be especially relevant in a setting (such as a jurisdiction with a diverse populace) that desperately needs a sense of community. But of course, identity staking is as much an expression of what one is *not* as it is of what one *is*. If one says that Iraqis are Muslims, what does one say about non-Muslims, if not that they are not Iraqi? What remains is a curious (and emphatic) combination of tolerance and exclusion. Any casual observer of the human condition, but especially those who follow social psychology, knows how important group identity is to an individual's attitudes, behavior, and psychological health. And any observer of multiethnic states knows

the impact of such identity considerations on the health of democracy (see Horowitz, 2000; or Lijphart, 1999).

This tension between tolerance and exclusion in a constitution raises all sorts of questions, the answers to which are not obvious. What led the Iraqis to the seeming incoherence of Article 2? Precedent, one would think, for constitutions are hardly ever very original. But from whence does this precedent spring? And if the original arguments of the predecessors were to be uncovered, from what factors did that incoherence evolve? One would suspect some sort of compromise among pluralists and clerical interests. But do the authors recognize the tension in their work, and, if so, how do they imagine future generations would resolve it? How common is this mix of tolerance and exclusion in national constitutions? Is the species to be found mostly in the Islamic world, historically and currently, or where else has it thrived? What are the implications and consequences of these provisions? It seems, then, that one question begets another, the root of which are some basic historical questions.

The primary concern here is with understanding the historical distribution of religious provisions, in their various combinations, in national constitutions. The source of analytic leverage is an original dataset on the content of national constitutions, which Elkins, Ginsburg, and Melton (2019 [2006]) have been gathering since 2005 as part of the *Comparative Constitutions Project*. The background assumption is that these patterns of identity staking have broad implications for the management of ethnic diversity. The looming question is whether exclusive forms of an identity regime—such as state religion clauses—serve a disintegrative function in diverse states.

And of course it must be acknowledged that constitutions sometimes bear only a passing resemblance to what passes for law in the lives of their citizens and leaders. In the case of religion, Fox (2008) and others have found that the gap between preaching and practice can be substantial. Undoubtedly, constitutions matter under some conditions, but not others, and a productive line of inquiry is to understand these conditional patterns of enforcement. A threshold interpretive question in such an analytic exercise, of course, is to understand what the documents themselves say, whether or not they are works of fiction.

Alternative Conceptualizations of Religious Constitutionalism

Undoubtedly, scholars have already proposed helpful ways to think about differences in the way religion appears in written Constitutions. As a point of departure, consider the conceptualizations from two benchmark books on the topic in comparative politics, which serve as useful reference points. First, Ran Hirschl's (2011) concept of *constitutional theocracy*. This breed of Constitutional approach, as Hirschl sees it, is evident to varying degrees in settings as diverse as Iran, Malaysia, and the Vatican. "Varying degrees," is an important qualifier here, as Moustafa (2013) shows in the case of Malaysia. Nonetheless, for Hirschl, *constitutional theocracies* are arrangements that combine aspects of modern

constitutionalism (especially judicial review) with a state religion, a religious doctrine that serves as a source of law, and a clerical body that stands ready to interpret that doctrine independently of the sitting government. This conceptualization allows one to think about the tension between a constitution and its interpreters, on the one hand, and a religious scripture and its interpreters, on the other. Another useful conceptualization is one that Gary Jacobsohn introduces in the *Wheel of Law* (2003), in order to understand Indian secularism. Jacobsohn's two-by-two typology conjoins the degree of state impartiality with the salience and penetration of religion in society. As such, Jacobsohn's typology shows how the impartiality of the Indian state differs from the same impartiality of the United States (just to take two cells), in that the salience of religious difference in India is substantially greater.

There are other ways to think about state approaches to religion, which may not depart radically from the Hirschl and Jacobsohn frameworks, though they emphasize different elements. So, in an influential formulation, Stepan (2000) sees the organization of religion and politics as one of "twin tolerations," that is, the state's (a) tolerance of disparate worship behavior and religion's (b) tolerance of state authority and autonomy. Lerner (2013), working in the Stepan tradition, surveys the instantiation of religion in four different constitutions and codes the state as either *permissive* of different roles for religion, or more *restrictive*, with decidedly different consequences for interstate harmony.

Ferrari (2008), for his part, builds a typology that puts church *establishment* and church–state *separation* at either ends of a spectrum, with *cooperation* as something of a middle category. It is quite possible that most of the action, at least in more modern, secular times, is between the middle category of cooperation, on the one hand, and full-on separation, on the other. Indeed, Resende (2017) focuses on this range of variation in her study of three third-wave constitutions. She sees the Polish and Spanish constitutions as *cooperative*, in that they recognize a special role for the Catholic Church, without declaring it official. By contrast, the arrangement in the Portuguese constitution is one of separation, in that the state and the church are fully divorced. Her objective is to explain these different trajectories in what appear to be similar contexts.

Economists in recent years have resuscitated some nearly forgotten but intriguing arguments by Adam Smith about religion, which have added another perspective. Adam Smith saw official state religion as something like a *monopolist* arrangement, which stifled the freedom of the religious market. As such, he expected that state religion would discourage religious adherence and participation for congregants who might prefer other spiritual variants of faith. Stark and Bainbridge (1987), Finke and Stark (1992), Iannaccone (1991), North and Gwin (2004), Barro and McCleary (2005), and McCleary and Barro (2006) have elaborated this line of thinking in interesting ways and even marshaled the evidence to test these hypotheses, sometimes with discrepant results.

Probably the most nuanced and comprehensive conceptualization (and operationalization) of church and state is that developed by Jonathan Fox (2008). Fox is the author of a rich data set on "religion and the state," which covers various aspects of state laws and

procedures from 1990–2002. But he has also supplemented these data with a coding of constitutions in force in 2002 (Fox, 2011; Fox & Flores, 2009). For both sets of sources, Fox's higher level categorization scheme sorts clauses into three broad kinds: those that provide for (a) freedom of worship, (b) non-discrimination on the basis of religion, and (c) state religion. Within these categories, Fox identifies sub-variants. So, constitutions may declare an official religion, but they could also speak of a religious "state," or a "traditional religion." Within these possibilities, the modal category (almost 80% of those with something resembling state religion) is the simple declaration (Fox, 2011, p. 64), and it seems that the variants could be combined into a binary measure (as Fox does) without too much loss of information. Still, for some analyses, the nuances could matter. (Fox codes similar kinds of variation with respect to freedom of worship and non-discrimination.)

Another example of a more nuanced accounting is John Madeley's (2003) filigreed discussion of religious neutrality in the context of Europe. Madeley assembles archival data from Barrett, Kurian, and Johnson (2001), among others, to describe changes within European states with respect to some 10 dimensions of church–state relations, including state subsidies to churches and political restrictions. Similarly, Grim and Finke (2006) have assembled a battery of measures for a larger (than Madeley's) cross-section of countries, across three dimensions: (a) government regulation, (b) government favoritism, and (c) social regulation of religion.

A Simple Typology of Constitutional Approaches

Together, these studies present a rich and varied description of the relationship between church and state, each study with its interesting individual wrinkles. At the highest level of generalization, two basic dimensions run through these frameworks: (a) the positive *establishment*, or not, of a *state religion*; and (b) the provision for *freedom to worship*, presumably without *discriminatory* regulation. These basic dimensions make sense for our purposes here, where our interest lies in the broad strokes that one finds in national constitutions—the broad symbolic statements of an identity regime.

If these two dimensions are crossed, a set of four basic approaches to religion in constitutional law (Figure 1) emerges. The type in the northwest corner is, of course, the intriguing species described above—a combination of state religion and religious freedom (call this type *competing* or *dual commitment*, for lack of a better label). The *liberal* type is that embodied most classically by the U.S. Constitution and increasingly prevalent in modern constitutions—one espousing religious freedom and declining to name a state religion (or even forbidding such). The right column (no religious freedom) includes two interesting combinations. Those with an official religion, but without religious freedom, would seem to indicate a *dogmatic* approach—that is, constitutions of either a theocratic state or a homogenous one (a result of such a theocracy, perhaps). The fourth type distinguishes itself

by its absence of religious content: these are constitutions that are *silent* on religion altogether, as if religion were somehow irrelevant to higher law.

		Religious Freedom: Yes	Religious Freedom: No
State Religion	Yes	*Dual Commitment* (E.g., Iraq 2005)	*Dogmatic* (e.g., Iran 1979)
	No	*Liberal* (e.g., Brazil 1988)	*Silent* (e.g., Austria 1920)

Figure 1. A simple typology of the constitutionalization of religion. From author's own data.

Data and Measurement

One can describe the distribution of cases across these four types, across space and time, with original data on the content of historical constitutions from the Comparative Constitutions Project (Elkins, Ginsburg, & Melton, 2019 [2006]). The CCP's data collection process involves the following steps: (a) the development of a chronology of constitutional events (replacements, amendments, suspensions, etc.) for each independent country since 1789; (b) the collection of each of the texts associated with these events; (c) development of a conceptual inventory of constitutional topics and provisions; (d) preparation of a survey instrument for coding texts; (e) coding of written constitutions by two independent coders; and (f) reconciliation of instances of non-agreement by coders.

The sample analyzed here includes 734 of the 849 constitutions written between 1789 and 2018, as well as 2,590 of the 2,706 amendments to these documents. The sample is drawn from all independent states as identified by Gleditsch and Ward (1999). The identification of the "written constitution" requires some judgment. For the vast majority of states, the formal or nominal constitution in place is analyzed; for the small number of states that do not have a formal constitution in a single document those statutes that create a branch of government or articulate a bill of rights are treated as "constitutional"; these are laws that are presumed to be core parts of higher law. Thus, the corpus includes the Human Rights Act of the United Kingdom in 1998 or the New Zealand Bill of Rights Act, because these countries do not have single codified constitutions. However, statutory rights are not included. The intention here is to limit analysis to the "highest" (most foundational and most entrenched) set of norms in the jurisdiction.

The particular interpretive question is whether the constitution declares an official religion and whether it provides for religious freedom. As with any classification, there are boundary cases with respect to each of these judgments, some of which are recorded in the data. In particular, with respect to state religion, an intermediate category codes whether a constitution singles out a religion for special treatment as opposed to declaring the religion official (see examples). The coding for religious freedom is less nuanced; the question is simply whether the constitution declares religious freedom in clear and general terms.

The Contours of State Religion and Religious Freedom

Evidently, commitments to an official religion and religious freedom are both on display in the early constitutions of the modern state era, albeit to different degrees. One can get a sense of the distribution of cases from Figure 2, which plots, separately, for Latin America the proportion of those constitutions with state religion and those with religious freedom. Latin America is an analytically useful subgroup because its population of states is fairly stable across the last 200 years. Figure 2 shows a striking X-like pattern: evidently, in Latin America at least, state religion and religious freedom have trended in two very different directions. The graph shows that throughout most of the 19th century, most Latin American countries provided for a state religion, but not religious freedom. Of course, the reverse is now true, which is part of what elicits raised eyebrows at dual-commitment states.

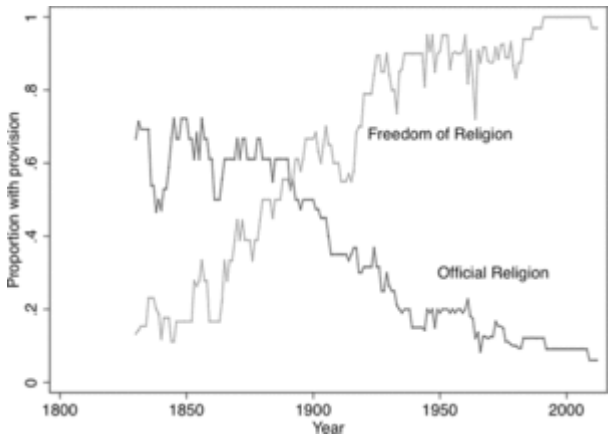

Figure 2. Official religion and religious freedom veer in two different directions in Latin America. From Comparative Constitutions Project. Sample/Universe: n = 787 of 961 known constitutional systems (and their amendments), 1830–2016.

State religion is decidedly an endangered species in Latin America these days. As of July 2015, Argentina and Costa Rica are the only constitutions in Latin America with an official religion stipulation in their constitutional text. Importantly, both are older constitutions: Argentina's dates from 1853, and Costa Rica's from 1949. Those late vintages remind us that state religion used to be the norm, and not just in Latin America. In 1850, 13 of 18 Latin American constitutions identified a state religion. Also, the remnants of state religion in the region's older constitutions remind us that the generation of a constitution matters as to its content, as does its morbidity. Old ideas die more easily in constitutional systems with more reform "churn," in which the frequency of reform is high.

A Tale of Two Regions

The Latin American historical data suggest that state religion, once vibrant, is in decline and has been replaced presumably by statements of religious freedom and non-discrimination. In this sense, the Latin American data fit with a priori expectations about the trending role of religion in modern constitutions more generally.

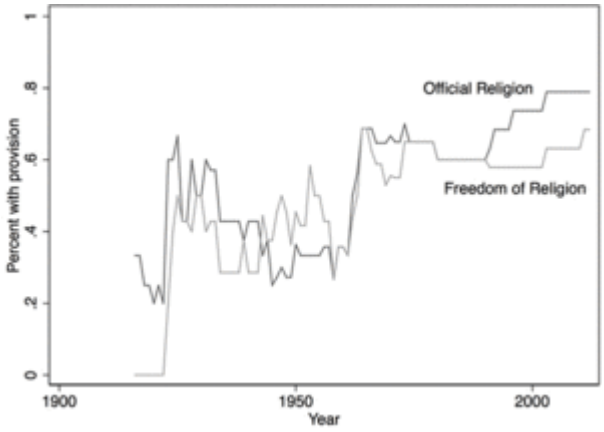

Figure 3. Official religion and religious freedom alive and well in the Middle East and North Africa. From Comparative Constitutions Project. *Sample/Universe*: n = 53 of 59 known constitutional systems (and their amendments) in the Middle East and North Africa, 1945–2016.

But the Latin American trend turns out to be not especially representative. Consider the same provisions for constitutions from the Middle East and North Africa[3] (Figure 3). In this set of countries, official religion is alive and well. In fact, official religion is even more common in these countries than is freedom of religion.

Trends by Type

The independent trends for state religion and freedom of religion are telling. But observing them jointly explains something about the distribution of constitutions into the four categories described above. Figure 4 shows this distribution, for all countries, over time. The most striking story is one that was presaged, to some degree, by the trends above. That is, that the liberal form, though comparatively rare early in the 1800s has become the dominant form in modern constitutions. This trend comes at the expense of the steadily fading *silent* approach. Although almost 80% of countries' constitutions were silent about religion in 1840, only 11% were so in 2000. Religion, in some form, plays a role in most modern constitutions.

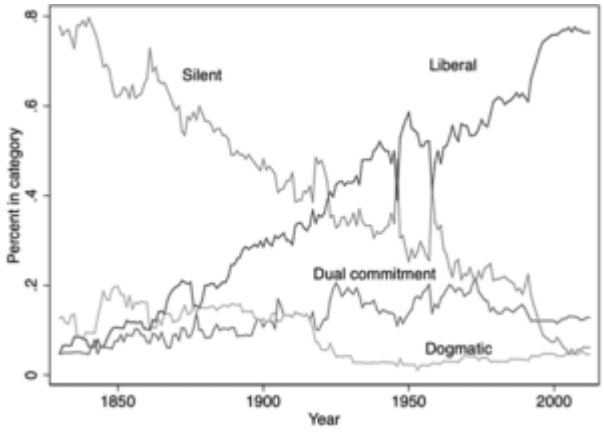

Figure 4. Constitutional approaches to religion, over time. From Comparative Constitutions Project. Sample/Universe: n = 787 of 961 known constitutional systems, 1830–2016.

Meanwhile, the *dogmatic* class seems to have dropped precipitously in the early 20th century. Today only 10 constitutions have an official religion without an expressed freedom of religion. This class includes Libya (1969), Iran (1979), and Saudi Arabia (1991).[4] This decline stands in contrast to a larger and more stable group of cases that continue to exhibit the state-religion–tolerance paradox. Today, 24 constitutions include both provisions. Of these, 14 constitutions proclaim Islam as the official state religion, five claim Catholicism, three Protestantism, one Buddhism, and one country-specific denomination (Armenian Apostolic).[5]

Among constitutions in the Middle East and North Africa regions, the dual commitment and dogmatic classes have always been significant (Figure 5). Now, however, the two together make up the lion’s share of cases (81%). Dual commitment does indeed have a long history in Islamic higher law. Turkey’s constitution of 1876, famously, exhibited such. Egypt’s constitution of 1923 continued this practice, followed by Iraq in 1925. After World War II, many of the new states in the region carried on the practice (e.g., Jordan [1946], Syria [1950], Libya [1951], Tunisia [1959], and so on).

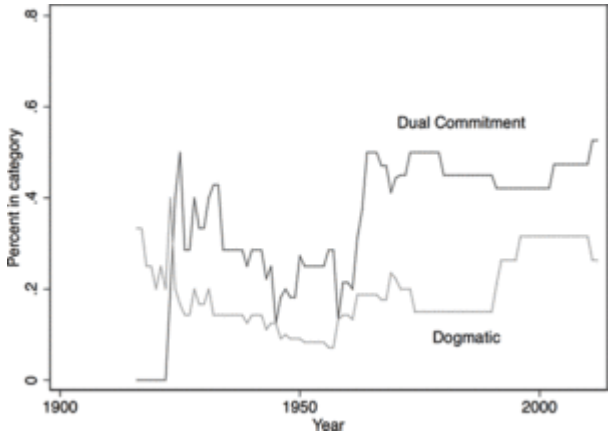

Figure 5. Patterns of classification in the Middle East and North Africa. From Comparative Constitutions Project. Sample/Universe: n = 60 of 76 known constitutional systems (and their amendments) in the Middle East and North Africa, 1945–2016.

State Religion: Where and When

Here the focus returns to those countries that provide for state religion, whether or not it is balanced with religious freedom. Figures 6 and 7 show each and every spell since 1789 in which a national constitution has provided for an official state religion. For presentation purposes, the figures are divided roughly by the year of adoption; most early adopting countries are depicted in Figure 6 and most late adopting countries in Figure 7.

In preparation for future analyses, it might be interesting to identify periods of shift as possible points of leverage in assessing effects. In this respect, among the cases of long-term state religion, three cases stand out: the United Kingdom, Bolivia, and Paraguay have all dispensed with state religion after centuries with such. Note that in the United Kingdom, a shift is coded in 1998 from a declaration of official religion to an intermediate position of favoring a particular religion. Clearly, the Church of England still enjoys special status, but the codification of U.K. constitutional documents in 1998 has made it clear that in the United Kingdom, if not England, there is no state religion. On the flip side, Figure 7 depicts a set of countries that have adopted state religion clauses in the last 20 years: Bangladesh, Saudi Arabia, Yemen People’s Republic, Oman, Pakistan, Qatar, and Armenia. In between the recent and long-term cases, one finds a set of jurisdictions that are no doubt interesting in their own right.

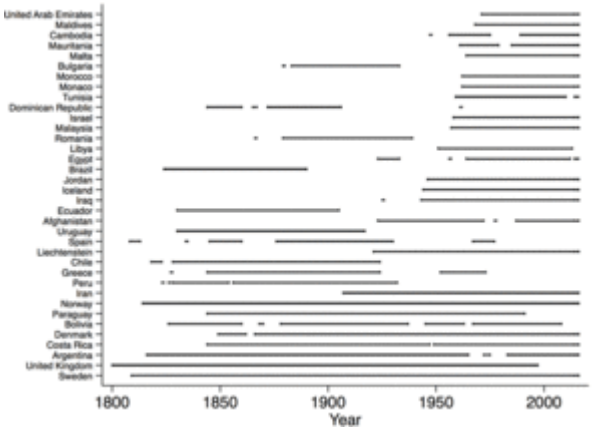

Figure 6. Constitutionalized state religion: Where and when? (Part I). From Comparative Constitutions Project. Sample/Universe: n = 809 of 1,110 known constitutional systems (and their amendments), 1800–2016.

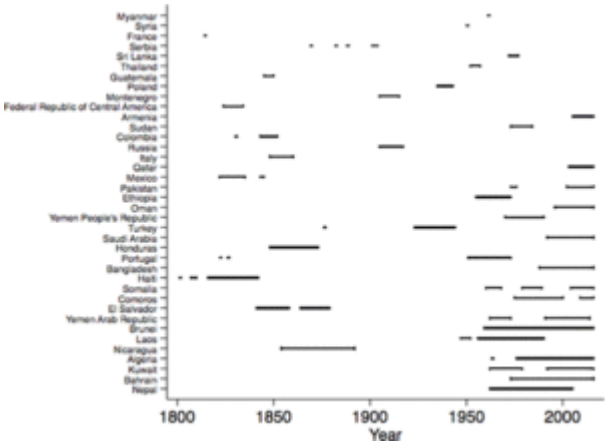

Figure 7. Constitutionalized state religion: Where and when? (Part II). From Comparative Constitutions Project. Sample/Universe: n = 787 of 961 known constitutional systems, 1830–2016.

The Language of State Religion

So how is state religion expressed in constitutions? And how has this changed over time? One of the first modern (i.e., post-1787) Constitutions to provide for state religion was the Haitian charter of 1801, a radical text in many ways. Among other things, it emphatically outlawed slavery and declared Toussaint Louverture governor for life (apparently at Alexander Hamilton's suggestion). To digress, the governor-for-life clause reads: "Per the wishes of the grateful inhabitants, the reins are confided to him for the rest of his glorious life" (Haiti, 1801, Article 28). This ad hominem clause, as interesting as it is, *is* relevant to our story. Toussaint, as it happens, was deeply averse to the then-widescale practice of voodoo, which led to his preference for a state religion (Catholicism, of course). Article 6 from the Haitian text, thus, states:

> *Article 6*. The Catholic religion, Apostolic and Roman, is the only one publicly professed (Haiti, 1801).

The early European Constitutions, whose clergy were very much at the table in constitutional deliberations (see Elkins, 2010), also carved out an official space for religion (e.g., Spain, 1912; Norway, 1814; and Portugal, 1822). Norway's text, some will know, is still in operation after 200 years (though it should be noted that it is written in a dialect of Norwegian that is no longer spoken or written, except for constitutional reforms). Norway's Article 2, in 1814, read as such:

> *Article 2*. The Evangelical Lutheran Religion shall remain the official religion of the State. Inhabitants who profess the same shall be required to educate their children therein, Jesuits and Monastic orders shall have no place in the country (Norway, 1814).

Amendments have since diluted the singular dedication to Evangelical Lutheranism and any distrust of the Jesuits. Article 16, the heir to Article 2, now reads as follows:

> *Article 16*. The Norwegian church, an Evangelical-Lutheran church, shall remain the Norwegian National Church and will as such be supported by the State. Detailed provisions as to its system shall be laid down by law. All religious and philosophical communities are to be supported on an equal footing (Norway, 1814).

The Norwegian amendment is now par for the course among modern state-religion clauses, many of which tack on a nod to non-discrimination after professing a preference for a religion. So, for example, Liechtenstein's (1921 constitution):

> *Article 372(2)*. The Roman Catholic Church is the State Church and as such enjoys the full protection of the State; other confessions shall be entitled to practice their creeds and to hold religious services to the extent consistent with morality and public order (Liechtenstein, 1921).

Compare the Liechtenstein clause to the remarkably similar Article 75 from Costa Rica's constitution (1949):

> *Article 75*. The Roman, Catholic, Apostolic Religion is that of the State, which contributes to its maintenance, without preventing the free exercise in the Republic of other beliefs that do not oppose themselves to the universal morality or good customs (Costa Rica, 1949).

Other constitutions maintain the simplicity evident in the Haitian wording of 1801. Witness Argentina's Article 2, originally penned in 1853:

> *Article 2*. The Federal Government supports the Roman Catholic Apostolic Faith (Argentina, 1853).

Or the somewhat more presumptuous but non-specific pronouncement in Indonesia's Article 291:

> *Article 291(1)*. The State shall be based upon the belief in the One and Only God (Indonesia, 1945).

Among predominantly Islamic countries, the first expression of an official religion was that in the Ottoman Empire's constitution of 1876, Article 11, which reads as follows:

> *Article 11*. Islam is the state religion. But, while maintaining this principle, the state will protect the free exercise of faiths professed in the Empire, and uphold the religious privileges granted to various bodies, on condition of public order and morality not being interfered with (Ottoman Empire, 1876).

The Ottoman's well-reputed tolerance is evident in the last refrain, which sets out a guarantee of religious freedom conditional on public order and morality, a conditional freedom repeated in later constitutions. The Egyptian constitution of 1923, on the other hand, reads more simply. Its Article 149 states:

> *Article 149*. The religion of the state is Islam. Arabic is the official language (Egypt, 1923).

This simplicity seems to have carried through to the Arab Spring texts. So, Tunisia (2014), the springboard of the Arab Spring reads as follows:

> *Article 1*. Tunisia is a free, independent, sovereign state; its religion is Islam, its language Arabic, and its system is republican (Tunisia, 2014).

All of these provisions of state religion have one thing in common. They are all simple expressions of a particular cultural basis for state identity, in the same way that state language and ancestral citizenship clauses are.

Not-Quite State Religion

The foregoing string of excerpts may give the impression that constitutions either provide state religion, or not. But, like everything else, state religion is not like the proverbial pregnancy. One intermediate category, at least, is one that the author and his collaborators in the CCP have identified as expressions of religious preference or favoritism. These expressions fall short of official status, but their implication may be clear enough that some might consider the two species as effectively equal. Again, the shift observed in the United Kingdom in 1998 to preference as against officialdom for the Church of England is one that some may not see as a significant change.

The intermediate case is, admittedly, a minority, but not a tiny one. Some 41 (or 5%) of the 725 historical constitutions in our sample identify a religion for special treatment. (Note that the sample was obtained from an estimated universe of 860 constitutions written since 1789).

Article 21 of Burma's independence constitution of 1947 falls in this category:

> *Article 21.(1)* The State recognizes the special position of Buddhism as the faith professed by the great majority of the citizens of the Union.
>
> (2) The State also recognizes Islam, Christianity, Hinduism, and Animism as some of the religions existing in the Union at the date of the coming into operation of this Constitution.
>
> (3) The State shall not impose any disabilities or make any discrimination on the ground of religious faith or belief.
>
> (4) The abuse of religion for political purposes is forbidden; and any act which is intended or is likely to promote feelings of hatred, enmity or discord between racial or religious communities or sects is contrary to this Constitution and may be made punishable by law (Burma, 1947).

The evolution of the Burmese story has some exciting twists and turns. Any ambivalence about official religion in the 1947 constitution was settled by an amendment in 1961, which attempted to institutionalize the observance and protection of Buddhism in Myanmar. In that amendment, Article 21(1) was upgraded to simply state, "Buddhism, being the religion professed by the great majority of the citizens of the Union, shall be the State religion." The drafters elaborated what, exactly, state religion meant in an addendum to Article 21 (Articles 21a through 21d):

> *Article 21a*. Buddhism being the State religion of the Union, the Union Government shall:
>
> **(i)** promote and maintain Buddhism for its welfare and advancement in its three aspects, namely, pariyatti sasana (study of the Teachings of the Buddha), patipatti sasana (practice of the Teachings), and pativedha sasana (enlightenment);
> **(ii)** honour the Tiratana, namely, the Buddha, Dhamma and Sangha;
> **(iii)** protect the said religion in its three aspects and the Tiratana from all dangers including insult and false representation, made by words, either spoken or written, or by other means.
> **(ii)** honour the Tiratana, namely, the Buddha, Dhamma and Sangha;
> **(iii)** protect the said religion in its three aspects and the Tiratana from all dangers including insult and false representation, made by words, either spoken or written, or by other means (Burma, 1961).

Articles 21b–d continued by stipulating how the state would maintain and preserve the teachings and texts of the clergy in some detail. The effect, to the author at least, is to clarify that the slight shift in language (to "state religion") in Article 21 was no mistake.

Nevertheless, to continue the Burmese saga, the 1961 amendments would be short-lived (witness the hardly perceptible dot on Figure 7. In 1962, the Burmese socialists took power and installed their own constitution. Not surprisingly, perhaps, almost any mention of

the opiate of the masses—much less that of a *state* religion—was removed. The freedom of religion and conscience was all that was preserved.

But constitutional cycles are such that ideas rarely die; they just hibernate. Come 2008, the socialists were long gone, and the Burmese military was ready to christen a new constitution. This would be a text 18 years in the making, much of it done well behind the scenes, in a town removed from the capital city. And after 18 years of writing, the document was finally ratified by election on the day of a massive typhoon. Of course, the military would not postpone the vote that day, and it is hard to imagine a more ill-fated beginning to a constitutional system. Many know the document for what it says about the selection of the executive. That is, that the president, according to Article 59(f), cannot have any foreign attachment or citizenship, a clause that effectively prevents Aung San Suu Kyi from assuming the office. More relevant here, however, is that the drafters returned to their 1947 roots regarding religion. Articles 361 and 362 are identical to the clauses of the 1947's Article 21 regarding the special status—but not official religion—of Buddhism. Compare the following from Burma's 2008 Constitution to the first two clauses of the 1947 text's Article 21 above:

> *Article 361*. The Union recognizes special position of Buddhism as the faith professed by the great majority of the citizens of the Union.
>
> *Article 362*. The Union also recognizes Christianity, Islam, Hinduism and Animism as the religions existing in the Union at the day of the coming into operation of this Constitution.

Any differences must be due to translation.

State Religion: Never Ever!

Of course, there is a third way to approach state religion, and that is to outlaw it. Most readers will be familiar with the opening lines of the first amendment to the U.S. Constitution (1789): "Congress shall make no law respecting an establishment of religion." Since 1789, 127 (17%) of the 725 historical constitutions in the sample herein have had such a clause.

These clauses, quite possibly, make for interesting reading and analysis unto themselves. However, such analysis is left for another day or another scholar. But consider the Haitian clause of 1805, which brings us full circle. It turns out that Haiti was not only one of the first constitutions to enshrine a national religion (in 1801), but it was also one of the first to forbid such in Article 50 of its subsequent constitution of 1805, which stated simply, "The law admits of no predominant religion." Such is both the high frequency of Haitian constitutional reform (25 constitutions since 1801 by our count) and its cyclic nature, that the country would come back to state religion in two subsequent constitutions (1807 and 1816). Its other constitutions were mostly silent regarding official religion (13 cases of such), or accorded Catholicism special treatment (1888 and 1935). The 1805 constitution

is the only one to expressly deny official religion. (Note that there are six Haitian constitutions that the author has not read and interpreted.)

Conclusions

This march through national constitutions, past and present, clears some brush and identifies areas for future inquiry. The trends in state religion and religious freedom are quite clear. In most of the world, the first has been in decline, whereas the second is nearly universal. But it should be noted that the global view can be deceiving, something which is clear once one compares Latin America to the Middle East–North Africa. Latin America very much represents the divergent paths of state religion and religious freedom. The Middle East, on the other hand, suggests that both commitments are thriving in at least that particular habitat.

All that, of course, is an analysis of the two variables independently. The *combination* of these two provisions allows one to say something about the prevalence of different species in the *arrangement* of constitutional laws on religion. Through a simple typology, four types of arrangements that lie at the intersection of the two dimensions are evident. The motivating concern, of course, has been with the dual commitment to state religion and religious freedom, which seems incoherent. However, some equally interesting combinations emerge—namely, the *dogmatic*, *silent*, and *liberal* approaches to religion.

Conceptualization and description is the starting place here, but a more ambitious goal is to reach for the consequences of these commitments. The background assumption in this article is that state religion and religious freedom have potentially strong effects on the attachment of religious minorities to the state. Religious freedom may reassure minorities of their practice of their way of life, but perhaps at the expense of reinforcing differences. A state religion, meanwhile, communicates very powerfully that religious minorities are indeed out-groups. So how to test these hypotheses? One productive avenue would be to assess these effects experimentally, ideally in a design that mimics state membership criteria. Another complementary approach would be to assess, observationally, the correlates of these instances of exclusive identity regimes. These research agendas should illuminate some of the consequences of identifying—constitutionally—groups as insiders and outsiders.

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Notes:

(1.) The source for this and other contemporary (in-force) constitutional text is the website *Constitute* (Elkins, Ginsburg, Melton 2019 [2013]), online at constituteproject.org. Links are "deep links" to the particular excerpt.

(2.) There is a lively debate about the compatibility of religious commitments with those to democracy. An incomplete list of contributors might include Stepan (2000), Hirschl (2011), Braithwaite and Bramsen (2011), Brown (2012), Driessen (2010), and Fox (2007).

(3.) Regional categorizations always include some element of arbitrariness regarding cut-off points. Here a regional categorization that the authors developed is used, which, to them, is more satisfactory than most.

(4.) The full list of 10 includes Mauritania, Somalia, Comoros, Algeria, Libya, Iran, Israel, Saudi Arabia, Yemen, and the Maldives.

(5.) The Armenian Apostolic Church seems to have been associated with Armenia in an official capacity since the 400s CE.

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